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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

REIGH LEA MOORE et al.,

Plaintiffs and Respondents,

v.

RISA BERNSTINE et al.,

Defendants and Appellants.

E048820

(Super.Ct.No. CIVRS807597)

OPINION

APPEAL from the Superior Court of San Bernardino County. David A. Williams, Judge. Reversed with directions.

Cripe & Graham, Gary E. Cripe; and Ai Woodward for Defendants and Appellants.

Prenovost, Normandin, Bergh & Dawe, Theodore A. Prenovost and Kristin F. Godeke for Plaintiffs and Respondents.

Defendants and appellants Risa Bernstine and Shula Bernstine appeal after a default judgment was taken against them over the purchase and sale of a business.

Defendants do not contest the default or the default judgment, in principle, but argue that

the amount of the judgment improperly exceeded the amount of the demand in the complaint. They argue in addition that the court erred in awarding interest on the judgment amount. We reverse the judgment and remand with directions.

FACTS AND PROCEDURAL HISTORY

The underlying action arises out of the sale of a business. Plaintiffs and respondents Reigh Lea Moore and Monique Hamilton¹ owned RC Club Cheer, a cheerleading gym. Sellers agreed to sell RC Club Cheer and all of its assets to Risa Bernstine. The purchase price for the business was \$84,679.62. Risa Bernstine signed as the purchaser; Shula Bernstine signed the agreement as a “guarantor.” The buyers agreed to make payments according to a schedule chart to the sellers and to another person, Victoria DeArmond. The business and its assets were supposed to change hands as of May 1, 2006.

In August 2008, the sellers filed an action against the buyers for breach of contract, for money had and received, for an account stated, and for breach of guaranty. The sellers alleged that the buyers had agreed to pay the purchase price of \$84,679.62, and to reimburse the sellers for amounts owed to the corporation before the transfer date of May 1, 2006, not to exceed \$13,019.53. The sellers alleged that the buyers had made all payments owed to DeArmond, and that they had made some payments to the sellers. The buyers made some payments up through May 5, 2008, but nothing thereafter. The

¹ For convenience, Reigh Lea Moore and Monique Hamilton will hereafter be referred to jointly as the “sellers”; Risa and Shula Bernstine will hereafter be referred to jointly as the “buyers.”

complaint alleged that the buyers owed Moore \$25,539.81, plus interest from the date of breach, and owed Hamilton \$23,968.51, plus interest from the date of breach. The total damage amounted to \$49,508.32, plus interest. The common count causes of action essentially repeated the breach of contract allegations, except that the breach of guaranty cause of action was alleged as to Shula Bernstine only. The prayer of the complaint demanded \$49,508.32 in damages, plus interest, and for reasonable attorney fees and costs.

In November 2008, the sellers requested entry of the buyers' defaults. The sellers' request for court judgment asked for the "Demand of complaint (Contract)" in the amount of \$49,508.32, "Interest (Contract)" in the amount of \$13,034.93, "Demand (Credit Line)" in the amount of \$55,400, and "Interest (Credit Line)" in the amount of \$17,082.17, together with costs of \$390, for a total judgment of \$135,415.42.

The sellers' brief in support of the default judgment outlined that "[a]s part of the terms and conditions of the Contract, [buyers], were required to pay-off a RC CHEER's line of credit with Bank of America, which at the time of the Contract was approximately \$8,000.00. [Buyers] were not authorized to withdraw any sums from the [line] of credit. Notwithstanding the foregoing, [buyers] on six (6) separate occasions, fraudulently forged . . . Moore's signature on withdraw[al] forms for the purposes of taking advances on the line of credit. From the period of September 2006 through August 2007, [buyers] have fraudulently withdrew \$55,400.00 from the line of credit."

The court considered the sellers' declaration in support of the judgment and gave judgment for the entire amount requested, \$135,415.42, including \$55,400 principal plus \$17,082.17 interest attributable to the line of credit.

The buyers filed a timely notice of appeal.

ANALYSIS

I. The Judgment Should Be Modified to Strike the Amounts

Pertaining to the Line of Credit

The buyers assert, and the sellers concede,² that the judgment should be modified to strike the amounts pertaining to the line of credit. Code of Civil Procedure sections 580 and 585 provide that the relief granted on a default judgment may not exceed the demand of the complaint. The complaint here was for breach of the agreement to purchase RC Cheer, and to make the payments specified in the purchase contract. As the buyers point out, neither the purchase agreement nor the complaint made any mention of the line of credit, repayment of the line of credit, or the alleged improper withdrawals from the line of credit. The amounts in the judgment attributed to the line of credit, and interest on the principal amount of the line of credit, were never part of the demand or the complaint and cannot properly be included in the judgment. (See *In re Marriage of Lippel* (1990) 51 Cal.3d 1160, 1166.)

² The sellers state in the respondent's brief that they agreed at once to the reduction in the judgment to exclude amounts based on the line of credit, pursuant to Code of Civil Procedure sections 580 and 585. The buyers, however, refused to accept the sellers' offer to stipulate to a reduction in the judgment, and went ahead with the appeal because of their additional contention that the sellers were not entitled to interest, even on the proper judgment amount on the contract (see part II, *post*).

The judgment must be vacated and remanded with directions to modify the judgment to strike any amounts attributable to the line of credit, and interest on the line of credit principal amount, a reduction of \$72,482.17.

II. The Award of Prejudgment Interest for Breach of the Purchase Agreement Was

Proper

The buyers further contend that the sellers should be precluded from recovery of any interest on the principal amount due under the purchase agreement. That is, the prayer of the complaint requested the principal sum of \$49,508.32, “plus accruing interest at the contract rate from and after date of default,” but the contract itself made no specific provision for interest. Thus, the buyers argue, the “contract rate” for prejudgment interest must be deemed to be zero, and no interest on the principal amount should have been awarded. The buyers urge that “[t]here is nothing in the law which prohibits parties to a contract from agreeing to a zero interest rate.”

As the sellers point out, however, the buyers’ contention rests solely on the language of the prayer of the complaint, which did refer to “interest at the contract rate.” The substantive allegations of the complaint, however, gave fair notice that the sellers were requesting “interest . . . at the maximum rate allowed by law,” as to each of their causes of action. The silence of the purchase agreement is not fatal to an attributed or implied claim of 10 percent interest. (Civ. Code, § 3289, subd. (b) [“[i]f a contract entered into after January 1, 1986, does not stipulate a legal rate of interest, the obligation shall bear interest at a rate of 10 percent per annum after a breach”].)

Here, the complaint as a whole gave fair notice of the demand for interest. Even the prayer, requesting interest “at the contract rate,” was consistent with the statutorily implied rate of 10 percent per annum. The amount due on the contract was \$49,508.32; the award of interest on that amount was proper.

DISPOSITION

The judgment is vacated and remanded with directions to the trial court to reduce the amount of the judgment by the sum of \$72,482.17, leaving a total judgment of principal and interest, plus costs, of \$62,933.25. In the interests of justice, the parties shall bear their own costs.

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/s/ McKINSTER

Acting P. J.

We concur:

/s/ KING

J.

/s/ MILLER

J.